



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

NOV 20 2000

**CERTIFIED MAIL NO. 7003 3110 0006 2000 8403
RETURN RECEIPT REQUESTED**

**IN REPLY: AIR-5
REFER TO: Docket No. R9-07-01**

Ron Runnels
General Manager
TXI Riverside Company.
P.O. Box 158
Oro Grande, CA 92368

Re: TXI Riverside Cement Company Finding and Notice of Violation

Dear Mr. Runnels:

Enclosed is a copy of a Finding and Notice of Violation ("NOV") issued pursuant to Sections 113(a)(1) and 113(a)(3) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that TXI Riverside Cement Company ("TXI") has violated certain requirements of the California State Implementation Plan and the National Emission Standard for Hazardous Air Pollutants, ("NESHAP") at its portland cement plant located in Oro Grande, California (the "Facility").

You should be aware that section 113(a)(3) of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, under section 306 of the Act, the regulations promulgated thereunder (40 CFR Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violation of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford TXI an opportunity to

present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV, please contact Charles Aldred of the Air Enforcement Office at (415) 972-3986, or have your attorney contact David Kim of the Office of Regional Counsel at (415) 972-3882.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", written over a horizontal line.

Deborah Jordan
Director, Air Division

Enclosure

cc: Eldon Heaston, Mojave Desert AQMD
CARB
Gregory Knapp, TXI
Patrick Cafferty, Munger Tolles & Olson



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

NOV 20 2006

IN REPLY: AIR-5
REFER TO: Docket No. R9-07-01

Eldon Heaston
Executive Director
Mojave Desert Air Quality Management District
14306 Park Ave.
Victorville, CA 92392

 Re: TXI Riverside Cement Company Finding and Notice of Violation
Dear Mr. Heaston:

Enclosed for your information is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA") issued to TXI Riverside Cement Company ("TXI") for violations at TXI's portland cement plant in Oro Grande, California (the "Facility").

The purpose of the NOV is to notify TXI that EPA finds that it has violated the National Emission Standard for Hazardous Air Pollutants ("NESHAP") requirements of the Clean Air Act ("Act") and the applicable state implementation plan ("SIP") for California. The violations are set forth more specifically in the enclosed NOV. The NOV has been issued pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

The Clean Air Act also provides that after 30 days from the date of issuance of this NOV, EPA will determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV, please contact Charles Aldred of the Region 9 Air Division's Enforcement Office at (415) 972-3986.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", with a stylized flourish at the end.

Deborah Jordan
Director, Air Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

NOV 20 2006

IN REPLY: AIR-5
REFER TO: Docket No. R9-07-01

James Ryden, Director
Enforcement Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: TXI Riverside Cement Company Finding and Notice of Violation

Dear Mr. Ryden:

Enclosed for your information is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA") issued to TXI Riverside Cement Company ("TXI") for violations at TXI's portland cement plant in Oro Grande, California (the "Facility").

The purpose of the NOV is to notify TXI that EPA finds that it has violated the National Emission Standard for Hazardous Air Pollutants ("NESHAP") requirements of the Clean Air Act ("Act") and the applicable state implementation plan ("SIP") for California. The violations are set forth more specifically in the enclosed NOV. The NOV has been issued pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

The Clean Air Act also provides that after 30 days from the date of issuance of this NOV, EPA will determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV, please contact Charles Aldred of the Region 9 Air Division's Enforcement Office at (415) 972-3986.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Jordan', with a stylized flourish at the end.

Deborah Jordan
Director, Air Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the Matter of)	
)	
TXI Riverside Cement Company)	
Oro Grande, California)	Docket No. R9-07-01
)	
)	FINDING AND
Proceeding Under Section 113(a),)	NOTICE OF VIOLATION
<u>Clean Air Act, as Amended.</u>)	

This Finding and Notice of Violation ("NOV") is issued pursuant to Section 113(a)(1) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(1), to TXI Riverside Cement Company ("TXI") for violations of the Act at its portland cement plant located in Oro Grande, California ("Facility").

The authority of the Administrator of the United States Environmental Protection Agency ("EPA") to issue this NOV pursuant to Section 113(a)(1) of the Act has been delegated to the Regional Administrator of EPA Region 9, and redelegated to the Director, Air Division, EPA Region IX.

I. STATUTORY AND REGULATORY AUTHORITY

A. 40 C.F.R. Part 63, National Emission Standards for Hazardous Air Pollutants

1. Pursuant to Section 112 of the Act, the Administrator of the EPA promulgated the following National Emission Standards for Hazardous Air Pollutants for Source Categories ("NESHAP"): 40 C.F.R. Part 63, Subpart A -- General Provisions, 64 Fed. Reg. 31,925 (Jun. 14, 1999), as amended (40 C.F.R. §§ 63.1 through 63.15) -- and

Subpart LLL – NESHAP from the Portland Cement Manufacturing Industry, 60 Fed. Reg. 4963 (Dec. 6, 1994), as amended (40 C.F.R. §§ 63.1340 through 63.1358).

2. Under 40 C.F.R. § 63.2, “major source” means “any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.”
3. Under 40 C.F.R. § 63.6(e)(3)(i), an owner or operator of a facility subject to Part 63 standards must develop and implement a written startup, shutdown, and malfunction plan that “describes, in detail procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control and monitoring equipment used to comply with the relevant standard.”
4. 40 C.F.R. § 63.1340 provides that 40 C.F.R. Part 63, Subpart LLL – NESHAP from the Portland Cement Manufacturing Industry (40 C.F.R. §§ 63.1340 through 63.1358) applies to “each new and existing portland cement plant which is a major source or an area source as defined in § 63.2.”
5. Under 40 C.F.R. § 63.1341, “dioxins and furans (D/F)” means “tetra-, penta-, hexa-, hepta-, and octa- chlorinated dibenzo dioxins and furans.”
6. Under 40 C.F.R. § 63.1341, “facility” means “all contiguous or adjoining property that is under common ownership or control, including properties that are separated

only by a road or other public right-of-way.”

7. Under 40 C.F.R. § 63.1341, “kiln” means “a device, including any associated preheater or precalciner devices, that produces clinker by heating limestone and other materials for subsequent production of portland cement.”
8. Under 40 C.F.R. § 63.1341, “portland cement plant” means “any facility manufacturing portland cement.”
9. 40 C.F.R. § 63.1343 provides in pertinent part:
 - (a) *General.* The provisions in this section apply to each kiln, each in-line kiln/raw mill, and any alkali bypass associated with that kiln or in-line kiln/raw mill.
 - (b) *Existing, reconstructed, or new brownfield/major sources.* No owner or operator of an existing, reconstructed or new brownfield kiln or an existing, reconstructed or new brownfield in-line kiln/raw mill at a facility that is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources, any gases which:
...
 - (3) Contain D/F in excess of:
 - (i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen; or
 - (ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) corrected to seven percent oxygen, when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.
10. 40 C.F.R. § 63.1344 provides in pertinent part:
 - (a) The owner or operator of a kiln subject to a D/F emission limitation under § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln particulate matter control device (PMCD) and alkali bypass PMCD, if applicable, does not exceed the applicable temperature limit specified in paragraph (b) of this section. ...
 - (b) The temperature limit for affected sources meeting the limits of paragraph (a) of this section or paragraphs (a)(1) through (a)(3) of this section is determined in accordance with § 63.1349(b)(3)(iv).

11. 40 C.F.R. § 63.1349(b)(3) provides in pertinent part:

The owner or operator of an affected source subject to limitations on D/F emissions under this subpart shall demonstrate initial compliance with the D/F emission limit by conducting a performance test using Method 23 of appendix A to part 60 of this chapter. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a kiln or in-line kiln/raw mill equipped with an alkali bypass shall conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass. However, the owner or operator of an in-line kiln/raw mill may conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is operating or not operating.

...

- (iv) The run average temperature must be calculated for each run, and the average of the run average temperatures must be determined and included in the performance test report and will determine the applicable temperature limit in accordance with § 63.1344(b).

12. Under 40 C.F.R. § 63.1348, "[t]he owner or operator of each new or existing raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; and bulk loading or unloading system; and each existing raw material dryer, at a facility which is a major source subject to the provisions of this subpart shall not cause to be discharged any gases from these affected sources which exhibit opacity in excess of ten percent."
13. 40 C.F.R. § 63.1350(a) provides that "[t]he owner or operator of each portland cement plant shall prepare for each affected source subject to the provisions of this subpart, a written operations and maintenance plan. The plan shall be submitted to the Administrator [of EPA] for review and approval as part of the application for a part 70 permit and shall include . . . (1) [p]rocedures for proper operation and maintenance of the affected source and air pollution control devices in order to meet

the emission limits and operating limits of §§ 63.1343 through 63.1348. . . .”

14. 40 C.F.R. § 63.1350(e) provides that “[t]he owner or operator of a raw mill or finish mill shall monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator PMCD of these affected sources in accordance with the procedures of Method 22 of appendix A to part 60 of this chapter. . . . If visible emissions are observed during any Method 22 visible emissions test, the owner or operator must: (1) Initiate, within one-hour, the corrective actions specified in the site specific operating and maintenance plan . . . (2) Within 24 hours of the end of the Method 22 test in which visible emissions were observed, conduct a followup Method 22 test of each stack from which visible emissions were observed during the previous Method 22 test. If visible emissions are observed during the followup Method 22 test from any stack from which visible emissions were observed during the previous Method 22 test, conduct a visible opacity test of each stack from which emissions were observed during the follow up Method 22 test in accordance with Method 9 of appendix A to part 60 of this chapter. The duration of the Method 9 test shall be 30 minutes.”
15. 40 C.F.R. § 63.6(e)(1)(i) provides that “[a]t all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. . . . Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of

operation and maintenance procedures (including the startup, shutdown and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.”

B. Mojave Desert Air Quality Management District Rule 1161

16. The Administrator of EPA, pursuant to authority under Section 109 of the Act, 42 U.S.C. 7409, promulgated the National Ambient Air Quality Standards (“NAAQS”) for certain criteria air pollutants. 40 C.F.R. §§ 50.9, 50.10.
17. Pursuant to Section 107(d) of the Act, 42 U.S.C. 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (“AQCR”) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the California AQCRs are listed at 40 C.F.R. § 81.305.
18. The Facility is located in Oro Grande, California, and is subject to the jurisdiction of Mojave Desert Air Quality Management District (“MDAQMD” or the “District”). EPA has designated MDAQMD as a severe nonattainment area for the NAAQS for ozone. See 40 C.F.R. § 81.305.
19. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the State. Upon approval by EPA, the plan becomes part of the “applicable implementation plan” (or “SIP”) for the State. Pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), EPA may enforce violations of the SIP.
20. MDAQMD Rule 1161 was approved into and made a part of the federally

enforceable SIP pursuant to 42 U.S.C. § 7410 on April 28, 2003.¹

21. MDAQMD Rule 1161 applies to all existing Portland cement kilns operated within the federal ozone nonattainment area of the District.
22. MDAQMD Rule 1161(B)(18) defines "Portland cement kiln" as "[a] system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker."
23. MDAQMD Rule 1161(B)(18)(b) defines "long dry kiln" as a Portland cement kiln "14' or larger in diameter, 400' or greater in length, which employs no preheating of the dry feed."
24. MDAQMD Rule 1161(B)(18)(c) defines "short dry kiln" as a Portland cement kiln "less than 14' in diameter, less than 400' in length, which employs no preheating of the dry feed."
25. MDAQMD Rule 1161(C)(2)(a) provides that any owner or operator of a short dry kiln subject to this Rule shall not exceed the NOx emission limit of 7.2 lb/ton of clinker produced when averaged over any 30 consecutive day period during all periods except start-up and shut-down.
26. MDAQMD Rule 1161(C)(2)(b) provides that kiln systems which recover waste heat and convert it into electricity shall comply with a NOx emission limit adjusted as follows:

$$\text{Lb NOx/clinker ton per Rule 1161(C)(2)(a)} \times \text{Recovery Factor.}$$

$$\text{Recovery Factor equals } 1 + \frac{\text{waste heat recovered (British thermal unit ("Btu")/hr)}}{\text{...}}$$

¹ 68 Fed. Reg. 9015 (Feb. 27, 2003). See also 67 Fed. Reg. 19 (Jan. 2, 2002) (previous version of Rule 1161 was incorporated into SIP on March 4, 2002).

kiln heat input (Btu/hr).

27. MDAQMD Rule 1161(F)(1)(a) provides that any owner or operator of a kiln subject to the Rule shall not operate such equipment unless it is equipped with either a continuous emissions monitoring system ("CEMS") which meets the requirements of 40 C.F.R. Part 60 or an alternate calculational and recordkeeping procedure based upon actual emission testing and correlations with operating parameters (e.g., kiln loading, fuel-type, percent excess oxygen) provided that the owner or operator can demonstrate, by preponderance of the evidence, that installation of CEMS is technologically and economically unfeasible. The installation, implementation and use of an alternate monitoring system must be approved by MDAQMD, California Air Resources Board ("CARB"), and EPA, in writing, prior to implementation.

C. Clean Air Act Title V Program

28. Title V of CAA, 42 U.S.C. §§ 7401, et seq., establishes a comprehensive Federal and state operating permit program that is intended to assure compliance with all applicable requirements of the Act.
29. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that "it shall be unlawful for any person to violate any requirement of a permit issued under [Title V]."
30. On March 17, 2004, MDAQMD issued a title V air permit (the "Permit") to the Facility.
31. The Permit requires the Facility to implement a maintenance program for all baghouses and dust collectors, including monthly stack observations, quarterly visual inspections of all associated equipment (inclusive of the bags and their suspension system), and weekly measurements of the pressure differential across the bags. The

Permit also requires the Facility to log the date of monthly stack observations, whether or not visible emissions were observed from the stack, and maintenance procedures to be implemented if any visible emissions are observed; the date of the quarterly inspections and actions taken on equipment found to be operating below standards; and the date of pressure differential reading of the bags, whether or not they are within appropriate range, and maintenance procedures to be implemented in case any such readings are outside of range.

II. FINDINGS OF FACT

A. General

32. TXI owns and/or operates a portland cement plant located at 19409 National Trails Highway, Oro Grande, California (the "Facility").
33. The Facility includes seven short, dry cement kilns and additional equipment necessary to produce portland cement and was constructed in the 1950's.
34. The Facility is an existing major source as that term is defined by the Act.

B. NESHAP

35. In June and December 2002, September 2003, and September 2004, the Facility performed source tests pursuant to 40 C.F.R. § 63.1349(b)(3).
36. From or about June 14, 2002 through December 14, 2002, the Facility exceeded the temperature limits set forth at 40 C.F.R. § 63.1344 and § 63.1349(b)(3)(iv) for the following durations:
 - a. Kiln 2 – 2,641 hours;
 - b. Kiln 3 – 2,711 hours;
 - c. Kiln 4 – 79 hours;

- d. Kiln 5 – 712 hours; and
 - e. Kiln 7 – 37 hours.
37. From or about April 14, 2003 through December 10, 2004, the Facility exceeded the temperature limits set forth at 40 C.F.R. § 63.1344 and § 63.1349(b)(3)(iv) for the following durations:
- a. Kiln 1 – 201,647 minutes;
 - b. Kiln 2 – 196,305 minutes;
 - c. Kiln 3 – 209,603 minutes;
 - d. Kiln 4 – 38,478 minutes;
 - e. Kiln 5 – 175,726 minutes;
 - f. Kiln 6 – 116,100 minutes; and
 - g. Kiln 7 – 27,122 minutes.
 - h. Total for all kilns – 964,981 minutes.
38. On or about August 16, 22, 25, and September 1, 2, 3, 2002, TXI failed to perform EPA Reference Method 9 visible emissions observations of the mill sweep and air separator PMCDs at the Facility after visible emissions had been observed during two consecutive EPA Reference Method 22 tests.
39. On or about January 25 and 27, 2005, emissions from rock reclaimer; kiln 6-7 clinker belt; dust collector #19 (raw mills 5-6); belt 3 to 18 transfer point (kiln 1-5 clinker); and belt 21 to 23 transfer point (clinker storage system) at the Facility exhibited opacity in excess of ten percent.
40. The startup, shutdown, and malfunction plan developed by TXI for the Facility fails to describe startup, shutdown, and malfunction procedures for the crusher, raw mill,

finish mill, storage equipment, and related dust collection/suppression equipment.

C. MDAQMD Rule 1161

41. According to the data collected and analyzed by the National Enforcement Investigations Center of EPA, aggregate rolling 30-day emissions of NO_x from all seven kilns at the Facility exceeded the rate of 8.5 lbs/ton of clinker on 789 days from or about February 1, 2000 to February 6, 2005.
42. According to the data submitted by TXI in response to EPA's July 14, 2006 information request, aggregate rolling 30-day emissions of NO_x from all seven kilns at the Facility exceeded the applicable NO_x/ton of clinker limit calculated pursuant to MDAQMD Rule 1161(C)(2) on at least 74 days from or about June 13, 2002 through February 4, 2005.
43. To date, TXI has not installed any CEMS on five of the seven kilns at the Facility. Nor has it submitted an application to or received any approval from EPA or CARB for an alternate emissions monitoring system for any of those five kilns.

D. Title V

44. From or about July 1, 2002 through September 30, 2004, TXI failed to perform at least 40 quarterly inspections of all equipment associated with baghouses and dust collectors, inclusive of the bags and their suspension system, at the Facility.
45. From or about March 17, 2004 through July 2004, TXI failed to perform weekly measurements of the pressure differential of 88 dust collectors at the Facility.

III. FINDINGS OF VIOLATION

46. From or about June 14, 2002 through December 10, 2004, TXI violated 40 C.F.R. § 63.1344 and 63.1349(b)(3)(iv) by exceeding the applicable temperature limits for

its kilns at the Facility.

47. On or about August 16, 22, 25, and September 1, 2, 3, 2002, TXI violated 40 C.F.R. § 63.1350(e) by failing to perform EPA Reference Method 9 visible emissions observations of the mill sweep and air separator PMCDs at the Facility after visible emissions had been observed during two consecutive EPA Reference Method 22 tests.
48. On or about January 25 and 27, 2005, TXI violated 40 C.F.R. § 63.1348 when emissions from rock reclaimer; kiln 6-7 clinker belt; dust collector #19 (raw mills 5-6); belt 3 to 18 transfer point (kiln 1-5 clinker); and belt 21 to 23 transfer point (clinker storage system) at the Facility exhibited opacity in excess of ten percent.
49. TXI has violated and continues to violate 40 C.F.R. § 63.6(e)(3)(i), by failing to describe startup, shutdown, and malfunction procedures for the crusher, raw mill, finish mill, storage equipment, and related dust collection/suppression equipment in the startup, shutdown, and malfunction plan for the Facility.
50. From or about June 14, 2002 to present, TXI has violated and continues to violate 40 C.F.R. § 63.6(e)(1)(i), by not operating the Facility in a manner consistent with safety and good air pollution control practices for minimizing emissions, as evidenced by TXI's frequent failure to comply with numerous requirements of the CAA NESHAP for the portland cement manufacturing industry.
51. From or about June 13, 2002 through February 4, 2005, TXI violated MDAQMD Rule 1161(C)(2) by exceeding the applicable NO_x/ton of clinker emission limit for the Facility on at least 74 days.
52. To date, TXI has violated and continues to violate MDAQMD Rule 1161(F)(1)(a) by

failing to either install CEMS at five of the seven kilns at the Facility or receive an approval from EPA and CARB for an alternate emissions monitoring system for the same.

53. From or about July 1, 2002 through September 30, 2004, TXI violated Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 71.12 by failing to perform at least 40 quarterly inspections of all equipment associated with baghouses and dust collectors, inclusive of the bags and their suspension system, at the Facility.
54. From or about March 17, 2004 through July 2004, TXI violated Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 71.12 by failing to perform weekly measurements of the pressure differential of 88 dust collectors at the Facility.

IV. ENFORCEMENT

Section 113(a)(3) of the Act provides that when any person has violated, or is in violation of, any requirement or prohibition of the Act, including a requirement or prohibition of any rule promulgated thereunder, EPA may

- issue an order requiring compliance with such requirements or prohibition, or
- issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$32,500 per day of violation, or
- bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$32,500 per day for each violation.

42 U.S.C. § 7413(a)(3). Furthermore, for any person who knowingly violates any of the requirements of Section 111, 42 U.S.C. § 7411, Section 113(c) provides for criminal penalties or imprisonment, or both.

In addition, under Section 306 of the Act, the regulations promulgated thereunder (40

C.F.R. Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violation of the Act may result in the subject facility being declared ineligible for participation in any federal contract, grant, or loan.

V. PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or a court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or a court to assess a penalty for each day of violation. For the purpose of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, EPA shall presume the days of violation to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

VI. OPPORTUNITY FOR CONFERENCE

TXI may, upon request, confer with EPA. The conference will enable TXI to present evidence bearing on the finding of violation, the nature of the violation, and any efforts it may have taken or proposes to take to achieve compliance. TXI may be represented by counsel. A request for a conference must be made within ten (10) working days of receipt of this NOV. The request for a conference or other inquiries concerning the NOV should be made in writing to:

David Kim (ORC-3)
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3882

If Mr. Kim is not available, you may also contact Charles Aldred of the Air Division at (415) 972-3986. By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

11/16/00

Date



Deborah Jordan
Director, Air Division
EPA, Region IX